

Introduced by Senator Alarcon

February 19, 2004

An act to amend Section 226.7 of the Labor Code, relating to compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1538, as amended, Alarcon. Compensation: meal and rest periods.

Existing law prohibits an employer from requiring an employee to work during any meal or rest period mandated by an order of the Industrial Welfare Commission and establishes penalties for an employer's failure to provide a mandated meal or rest period.

This bill would require employers to pay employees for any rest ~~break~~ *period* mandated by statute, regulation, or order of the Industrial Wage Commission and would establish the formula by which the rate of pay for piece rate workers' rest ~~breaks~~ *periods* should be determined.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It has been the long-standing policy of the state of California
4 to consider rest ~~breaks~~ *periods* mandated by orders of the
5 Industrial Welfare Commission as time worked for which there
6 shall be no reduction in pay.

1 (b) The clear purpose of this policy is to ensure that no
2 employee, regardless of industry or method of pay, suffers a net
3 loss of wages when taking rest ~~breaks~~ *periods* mandated by law.

4 (c) Since the enactment of statutory provisions that sanction
5 employers for failing to provide an employee with a rest period in
6 accordance with an applicable order of the Industrial Welfare
7 Commission, some employers have denied employees working on
8 a piece rate basis equivalent protection to hourly workers with
9 respect to full compensation for rest ~~break~~ periods.

10 (d) This employer practice unfairly discriminates against piece
11 rate employees and discourages them from taking rest ~~breaks~~
12 *periods*, which are integral to maintenance of a healthy and safe
13 workplace.

14 (e) It is therefore in the public interest to clarify that the benefits
15 of rest ~~breaks~~ *periods* mandated by law are fully extended to all
16 affected employees, including piece rate workers.

17 SEC. 2. Section 226.7 of the Labor Code is amended to read:

18 226.7. (a) No employer shall require any employee to work
19 during any meal or rest period mandated by an applicable order of
20 the Industrial Welfare Commission.

21 (b) If an employer fails to provide an employee a meal period
22 or rest period in accordance with an applicable order of the
23 Industrial Welfare Commission, the employer shall pay the
24 employee one additional hour of pay at the employee's regular rate
25 of compensation for each work day that the meal or rest period is
26 not provided.

27 (c) Rest ~~breaks~~ *periods* mandated by any applicable statute,
28 regulation, or order of the Industrial Welfare Commission shall be
29 counted as hours worked for which there shall be no deduction of
30 wages. Employees working on a piece rate basis shall be
31 compensated for rest ~~breaks~~ *periods* as follows:

32 (1) The employer shall determine the total amount of piece rate
33 earnings for any pay period in which the employee was paid by
34 piece rate.

35 (2) The employer shall determine the total amount of time
36 worked by the employee during the pay period.

37 (3) The employer shall use the amount established under
38 paragraph (1) and the total time worked under paragraph (2) to
39 determine the average pay rate applicable to rest ~~breaks~~ *periods* in
40 that pay period, which in no event may be below the minimum

1 wage. The employer shall pay this amount to the piece rate
2 employee as part of his or her regular pay.

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